**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**O.O.C.J.**

**CHAMBER SUMMONS NO.1144 OF 2003**
**IN**
**EXECUTION APPLICATION NO. 254 OF 2003**
**IN**
**ARBITRATION PETITION NO. 159 OF 2003**

Eureka Forbes Ltd .... Plaintiff
v/s.
Surya Morphy Richards Ltd .... Defendant
AND
Bank of India .... Applicant

Janak Dwarkadas with Rahul Chitnis i/b. Shreerang Shrimani for the plaintiffs.
Leon Samuel i/b. M/s. Advani and Co. for the defds.
S. Shetye with Mr. K.K. Shroff and Ms. Swati Deshpande i/b. M.S. Budhanwalla and co. for the applicants.

**CORAM: S.U. KAMDAR, J.**

**DATE : 22ND FEBRUARY, 2005.**

**P.C. :**

1. In respect of the properties under attachment, the applicant bank is claiming a charge by virtue of equitable mortgage in their favour. The applicant bank is also claiming that there is a recovery certificate issued by the DRT under the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993. In view of the judgment in the case of **Canara Bank vs. Allahabad Bank reported in AIR 2000 SC 1535** that by virtue of section 34 of

the Act the debt recovery officer is empowered to proceed and execute the said recovery certificate in priority to the decree passed by this Court. In the present case the decree holder is an unsecured creditor and thus not entitled to proceed with execution of decree in preference to the recovery certificate issued by DRT. Thus the execution proceedings in respect of the said properties will proceed before the recovery officer. The plaintiff herein who are unsecured creditors are claiming that the said properties belongs to the defendants and that they are entitled to execute the decree as against the said properties. They are also claiming that there is no valid mortgage in favour of the applicant bank. The plaintiffs are permitted to raise all these issues before the recovery officer. The applicant bank makes a statement that they are not objecting to the applicant raising all these issues before the recovery officer and/or Debt Recovery Tribunal and that the recovery officer and/or Debt Recovery Tribunal should determine the same in accordance with law. The DRT and or the Recovery Officer is directed to determine whether

there is a valid mortgage executed or not before the competent authority in the said recovery proceedings. With the aforesaid directions the said chamber summons is disposed off. There shall be no order as to costs.

sd/-

**********